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In the Supreme Court of the United States

OCTOBER TERM, 1965.

No. 381.

RETAIL CLERKS INTERNATIONAL ASSOCIATION,
LOCAL UNIONS NOS. 128, 633 and 954,
Petitioners,

vs.

LION DRY GOODS, INC.,
and
LASALLE'S,
A Division of R. H. Macy & Co.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS,
FOR THE SIXTH CIRCUIT.

BRIEF OF RESPONDENT IN OPPOSITION.

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OPINIONS BELOW.

The Court of Appeals' opinion and judgment to which the petition for certiorari is directed is reported in 341 F. 2d at page 715. The District Court rendered no opinion and did not make findings of facts and conclusions of law.

A previous decision by this Court establishing jurisdiction in the District Court in this matter is reported in 369 U. S. at page 17.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition, except to say that the time in which to file the petition was extended by order of Mr. Justice Stewart to July 22, 1965.

QUESTIONS PRESENTED.[1]

In an action to enforce an arbitration award, does the Court have the right to determine whether the award is within the limits of the jurisdiction conferred upon the arbitrator by the parties?

When an agreement restricts arbitration to grievances of individual employees, can an arbitrator entertain and make an enforceable award based on a complaint made directly to the arbitrator by a Union (neither certified nor recognized as employee bargaining agent) that its organizers (not company employees) are denied access to areas of company premises not open to the public?

Can a party against whom the enforcement of an arbitration award is sought present facts to the Court to show that the award was not made by the arbitrator selected by the parties when discovery of such facts was made following the award but before consideration of the enforcement action by the trial court?

STATUTE INVOLVED.

The action below was one commenced under and by virtue of Section 301 (a) of the Labor-Management Relations Act of 1947, 29 U. S. C. Section 185 (a), which provides:

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[1] We have restated the questions involved in this matter. We do so in the belief that as stated herein, they more accurately describe the questions which were before and were decided by the Court of Appeals.

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE.

This case has been before the Court of Appeals on two occasions. The first time the Court affirmed the District Court's dismissal of a complaint filed by the petitioners. On that occasion the District Court held that it was without jurisdiction over the subject matter of the action for the reason that a strike settlement agreement was not a contract between an employer and a labor organization within the meaning of Section 301 (a) of the Labor-Management Relations Act. The Court of Appeals' opinion which affirmed the action of the District Court holding that it was without jurisdiction is reported in 286 F. 2d 235. The opinion of the District Court on that point is reported in 179 F. Supp. 564.

This Court, however, held that a strike settlement agreement [see appendix] was cognizable by the District Court under 301 (a) and reversed. (369 U. S. 17.)

Inasmuch as the jurisdiction of the District Court was the only issue[2] finally determined, the action, as remanded,

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[2] Final paragraph Footnote No. 6, 369 U.S. 17.

"Respondent's contentions throughout, whether because of the stipulation or otherwise, has not been to negate the existence of any contract at all, but rather to deny that there is a contract of the kind contemplated by Section 301(a). The District Court so construed the defense. * * * And at no point in their brief at this point do respondents argue that no contract exists; *they agree that the only issue is jurisdictional.*" (Emphasis added.)

was one wherein the plaintiff Unions asked the District Court to enforce what it claimed to be valid arbitration awards made pursuant to and in accordance with a strike settlement agreement between the parties.

In the present petition the petitioners accuse the Court of Appeals of refusing to enforce the agreement between the parties and thus doing violence to the national labor policy. To properly weigh this charge, consideration of the following facts is necessary.

At the outset we should point out that the first time this case was before the Court of Appeals, the record presented there was tailored to the single question of the District Court's jurisdiction under Section 301 (a). The record before the Court of Appeals[3] on the second occasion (this case) added other portions of the District Court proceedings pertinent to a decision on the questions which remained before the Court, such as, for instance, evidence that counsel for the respondents, contrary to inferences made by petitioners, asserted time after time that his meeting with a panel did not or could not enlarge upon the prerogatives and jurisdiction of the L-M-C as defined in the December 24, 1958 Statement of Understanding. (Final par. at Appx. 15a.)

At the conclusion of a strike which involved three Toledo department stores, the individual stores handed the Toledo Labor-Management-Citizens Committee, a mediation agency, a "Statement of Understanding" setting forth therein the basis for secession of hostilities between the parties to this lawsuit. (The Lasalle "Statement of Understanding" is set forth in the Court of Appeals' appendix beginning at page 7a. The Lion Store "Statement of Un-

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[3] Respondents' Court of Appeals Appendix hereinafter identified by Appx. and (a) following the page number.

derstanding" is also set forth in that appendix beginning at page 9a. Except for the first three paragraphs of the Lasalle "Statement" which relates to the re-employment of the strikers, the "Statements of Understanding" are identical.)

The "Statements" also contained a disclaimer of representation rights by the Union, assurance of continuation of benefits and of no discrimination by reason of union activities, union membership or non-membership. The "Statements" recognized the right of employees to join or not to join a union as provided and guaranteed by the Labor Management Relations Act.

The "Statements" also contained provisions, considered by the respondents to be the key to this lawsuit, which provided:

> (1) "*Any individual employee who may have a grievance involving the interpretation or application of, or arising under, the terms of this Understanding* with the L-M-C, and who has presented such grievance to his supervisor and the Personnel Department without reaching a satisfactory solution, may take his case to the Chairman of the L-M-C who in turn shall refer the case to a panel of the L-M-C, whose majority decision and order shall be final and binding. * * *" (Appx. 8a, § 7, 10a, § 4.) (Our emphasis.)
>
> (2) * * * "Nothing herein shall preclude an employee representative from *entering areas of the store which are open to customers;* or from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operation of the business." (Appx. 8a, § 6, 10a, § 3.) (Emphasis ours.)
>
> (3) "* * * employees * * * will be returned to work * * * in their former position classifications * * *." (Appx. 7a, § 2.)

After all hostilities had ceased, non-employee union organizers sought admission to employee cafeterias of the stores of the two respondents. This was refused because the employee cafeterias in the stores are located in areas of the stores devoted to the storage of merchandise and/or office, accounting and payroll functions and not open to customers. Each of the stores has public eating accommodations. (Appx. 13a, etc., 17a, etc., 24a.)

The *Union complained* to the L-M-C, charging undue harassment of union organizers. (Appx. 12a.) *The Union grievance* was received by a panel, assumed to be one chosen as provided in the "Statements."

Two Lasalle employees who had been assigned to selling stations in the Men's Furnishings department prior to the strike were returned to that department in the same "position classifications" after the strike but were assigned to different selling stations. The failure to assign these employees to their former selling stations also brought forth a grievance. (Appx. 12a, § 2.)

In face of an admonition by counsel for the respondents at the panel session that the mere fact that a meeting was held "did not or could not enlarge upon the prerogatives and jurisdiction of the L-M-C as defined in our December 24, 1958 'Statement' to you" (Appx. 15a), the panel handed down a decision in these words:

> "The same freedom to contact employees should prevail at the Lion Store as prevailed at Lasalle's and Lamson's, that is, during recess or lunch periods. This applies to employees' cafeterias as well as public cafeterias. It must be viewed as a breach of faith on the part of management to create a place where union organizers cannot solicit union membership." (Appx. 12a, § 4.)[4]

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[4] Employee cafeterias in the "back of the house" were in existence in all of stores for many years prior to the strike. (Appx. 13a, 14a.)

"Both clerks are to be restored to their identical positions but this decision is not to be construed as inhibiting management from exercising its prerogative of rotating clerks in the same department. Management action in this case was untimely and not in the best interests of the company, the public or the individuals involved." (Appx. 12a, § 2.)

Counsel for the respondents immediately notified the L-M-C Chairman that the stores would not comply with the decisions because:

(1) The jurisdiction of any L-M-C panel to hear grievances was limited to those of "*any individual employee who may have a grievance involving an interpretation or the application of or arising under the terms of the Understanding* with the L-M-C" and then only after the individual employee had presented his grievance to his supervisor and to the Personnel Department without reaching a satisfactory solution. (Appx. 15a, 17a.)

(2) An L-M-C panel was not authorized to hear and determine a complaint or grievance *by the Union* or anyone else not an employee of the particular store involved. (Appx. 17a.)

(3) Employee representatives were permitted to communicate with employees *only in areas of the store open to the public* and communication with employees in the public areas was circumscribed by the condition that it be on the employee's non-working time and in no way interfered with the operation of the business. (Appx. 17a.)

(4) The attendance of counsel for the defendants at the meeting did not or could not enlarge upon prerogatives and jurisdiction of the L-M-C as defined in the December 24, 1958 "Statement." (Appx. 15a.)

(5) The stores could not, and would not, accept decisions which were not within the scope of the original understanding with the L-M-C committee as

set forth in the "Statements of Understanding." (Appx. 19a.)

Following the refusal of the respondents to comply with the decisions, the petitioners filed an action in the District Court asking the court to order compliance with the panel award. (Appx. 2a, etc.) The respondents filed an answer claiming, among other things, that the court did not have jurisdiction by virtue of Section 301 (a) of the Labor Management Relations Act of 1947, as amended. (Appx. 19a, etc.)

The case was submitted to the court on the pleadings, a stipulation (Appx. 23a), briefs and oral argument with the results hereinbefore described.

Present Proceedings.

The initial action taken after the case was remanded to the District Court was the filing of a motion for summary judgment by the Union. This was on or about May 3, 1962. (Appx. 26a.) This motion for summary judgment brought forth a timely response in which the respondents pointed out to the court that because of a procedural uncertainty in the Clerk's office, the respondents were advised that the case had not been returned to the District Court's docket.

In their response the respondents informed the Court that they were awaiting notice from the Clerk that the case was back on the docket before filing a motion for permission to file an amended answer. Because of the uncertainty and lack of notice that the matter was back on the court's docket, the proposed amended answer had not been submitted to the court prior to the motion for summary judgment. (Appx. 26a, 27a.)

The response pointed out that the contents therein were for a limited purpose and advised the court that the respondents were immediately filing a motion to amend their answer, specifically asking to reserve the right to file a more comprehensive response in opposition to the request for a summary judgment if the court refused permission to file an amended answer. (Appx. 27a.)

The respondents did file a motion to amend their answer and filed the proposed amended answer with the motion. (Appx. 27a, 28a, etc.)

The District Court erroneously, we believe, denied the respondents an opportunity to amend their answer and, at the same time, erroneously sustained the petitioners' motion for summary judgment. (Appx. 39a.)

The respondents filed a request for reconsideration of the granting of the summary judgment, pointing out to the court that the only issue decided by the Supreme Court was that the District Court had jurisdiction to hear the case on its merits. The respondents also told the court that there were disputed questions of material fact involved in the issues before the court and which had not previously been considered, including whether the persons who made the decision upon which the lawsuit was predicated was, in fact, an L-M-C panel. (Appx. 40a, etc.)

The court denied the request for reconsideration. (Appx. 43a.) There was no written opinion. The court did not make findings of fact and/or conclusions of law.

The court accepted the order and judgment submitted by the petitioners. This order not only contained an enforcement order in both instances in excess of any jurisdiction or authority granted to a panel by the parties but the order was even quite different than the decisions the panel fabricated. (Appx. 12a.)

It is from the order and judgment settled by the court (Appx. 44a, 45a) that the appeal to the Court of Appeals was taken and, as the basis for the appeal, it was contended that:

(1) The lower court should have refused enforcement of an order of the panel which was clearly beyond any jurisdiction or authority granted to any L-M-C panel by the parties in the "Statement of Understanding" because *only individual employees of the companies* have the right to take any unsatisfied complaint or grievance to the L-M-C for a decision, and because the two employees affected by the second cause of action were returned to work in their former position classifications, and because the assignment of duties for clerks was under the exclusive control of the employer; and

(2) Under no circumstances should the court have granted an enforcement order which would permit union organizers into areas of the stores which are not open to the public contrary to the express limitations contained in the "Statements"; and

(3) In the granting of summary judgment without giving the respondents an opportunity to file an amended answer and present the remaining issues to the court through evidence and/or argument, the respondents were denied due process of law, particularly in view of the claim (in the proposed Amended Answer) that the decisions being enforced were made by a panel which *was not* acting for the Toledo Labor-Management-Citizens committee, picked by the parties to arbitrate disputes within the framework of the "Statements."

ARGUMENT.

(A) Union's Complaint For N.L.R.B. or Court; Not Arbitrator.

Petitioners base their argument for review here on the claim that the decision of the Court of Appeals is based on grounds which are in severe derogation of the national labor policy as repeatedly pronounced by this Court (Pet. p. 4).

In support of that claim petitioners go forward to argue, in effect, that once an arbitrator assumes jurisdiction over a question submitted by a party, even though over the objection of the other party, the question whether the arbitrator wrongfully assumed or exceeded jurisdiction conferred by the parties is not open to question by the courts; and that whether the dispute comes within the scope of the contract is purely procedural, an area closed to court determination.

(1) Grievances Limited to Individual Employees.

Within the framework of this case the petitioners claim that even in the face of the plain language of the Statements of Understanding that "any individual employee who may have a grievance * * * and who has presented such grievance to his superior and the Personnel Department * * * may take his case to the Chairman of the L-M-C who in turn shall refer his case to a panel of the L-M-C * * *," whether the unions could process a grievance (not on behalf of individual employees but because its organizers had been refused access to areas of the company premises not open to the public) was a matter of procedure, and matters of procedure are for the arbitrators, not for the courts. (Pet. 14.)

While processing a grievance by the Unions for individual employees of the stores is one thing, the Union

as the grievant is quite another. That the Unions were seeking redress from the panel for refusal to permit Union organizers to enter areas of the stores closed to the public is clear from the complaint filed in the District Court where, in paragraph seven (7) it is alleged that the unions "protested such interference, and requested and petitioned the Labor-Management-Citizens Committee to hear, decide, and arbitrate such case, dispute or controversy and render a decision therein with regard to what rights plaintiffs had under the aforesaid agreement of December 24, 1958." (Appx. 4a.)

Parenthetically, it would appear that the Unions took the wrong door to gain entrance to those areas of the store which were closed to the public and not open to Union organizers by virtue of the limitations placed in the Statements by the parties. If the stores did interfere with or restrict the Unions' rights to organize employees, as defined in Section Seven (7) and protected in Section Eight (8) of the Labor Management Relations Act, the Unions should have gone to the door of the N. L. R. B. with an unfair labor practice charge rather than to the Arbitrator.

If, on the other hand, the Union as such had contract rights which were denied to it and if the initial jurisdiction was not exclusively in the N. L. R. B. under the *Garman* doctrine, the Unions' remedy was to sue on the contract, not seek to come in under an arbitration clause limited to individual employees.

(B) Decision Below in Accord—Not in Conflict With National Policy or Other Circuits.

With little more than superficial references to the Steelworkers decisions: *Steelworkers v. American Manufacturing Co.*, 363 U. S. 564; *Steelworkers v. Warrior Navigation Co.*, 363 U. S. 574; *Steelworkers v. Enterprise Wheel*

& *Car Corp.*, 363 U. S. 593; and to *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238, the petitioners place almost total reliance on that portion of the case of *John Wiley & Sons v. Livingston*, 376 U. S. 543, dealing with procedural arbitrability (part IV), ignoring, it seems, other portions of the opinion which restates the principles applicable to the questions which were before the Court of Appeals in this case.

In *John Wiley*, Mr. Justice Harlan clearly and concisely discusses the problems involved in the case. There were three. The first was whether a collective bargaining agreement survived a merger of two companies so as to be operative against *Wiley*, the successor company. This question the Court held was for the courts to decide:

> "Under our decisions, whether or not the company was bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the Court on the basis of the contract entered into by the parties." *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238, 241, 50 LRRM 2433. Accord. e.g., *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 582, 46 LRRM 2416. The problem in those cases was whether an employer, concededly party to and bound by a contract which contained an arbitration provision, had agreed to arbitrate disputes of a particular kind. Here, the question is whether Wiley, which did not itself sign the collective bargaining agreement on which the Union's claim to arbitration depends, is bound at all by the agreement's arbitration provision."

In articulating the reasons why the question is one for the courts, Mr. Justice Harlan continued:

> "The reason requiring the courts to determine the issue is the same in both situations. The duty to arbitrate being of contractual origin, a compulsory sub-

mission to arbitration cannot precede judicial determination that the collective bargaining agreement does in fact create such a duty."

and,

"Thus, just as an employer has no obligation to arbitrate issues which it has not agreed to arbitrate, so a fortiori, it cannot be compelled to arbitrate if an arbitration clause does not bind it at all."

The second problem in the case was *Wiley's* claim that the Union's grievances were not within the scope of the arbitration clause. After saying that the Union may not use arbitration to acquire new rights against *Wiley*, the Court held that *Wiley* was required to submit the subject matter to arbitration.

Thus, having decided that *Wiley* was bound by the arbitration clause and that the grievances came within the scope of the arbitration clause, the Court held in conclusion that the arbitrator, not the court, should determine whether "procedural" conditions to arbitration have been met, *Wiley* having claimed that the Union did not follow steps 1 and 2 of the grievance procedures which were conditions precedent to step 3—arbitration.

In this case, so far as a Union grievance is concerned, there were no "procedural" conditions involved for the arbitrator to determine. Here the question was whether the contract gave the arbitrator authority to consider grievances of Union organizers.

The three Steelworkers' cases, *supra*, particularly *Steelworkers v. Enterprise Wheel & Car*, 363 U. S. 593, and *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238, if not *John Wiley & Sons, supra*, make it clear that the right to arbitration and the enjoyment of the fruits thereof depends on and arises out of the contract terms.

The national labor policy, so far as it relates to arbitration, has been laid down by this Court, in the main, in those cases. The decisions flow naturally from the Court's decision in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, where it was held that Section 301 (a) of the Labor Management Relations Act of 1947, as amended, gave federal courts jurisdiction to enforce arbitration provisions in collective bargaining contracts, later interpreted in this case (369 U. S. 17) to include agreements such as the one in issue here.

Two of the Steelworkers cases, *American Manufacturing Co.*, 363 U. S. 564, and *Warrior Navigation Co.*, 363 U. S. 574, dealt with the right to arbitration and the authority of courts to force arbitration. The third case, *Enterprise Wheel*, 363 U. S. 593, like *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238, and portions II and III of *John Wiley & Sons, supra*, dealt, in one way or another, with District Court enforcement of arbitration awards.

In *American Manufacturing*, for instance, it was said that the role of the court is confined to ascertaining whether the party seeking arbitration is making a claim which, on its face, is governed by the contract.

In *Warrior Navigation*, the Court said that Congress had, by Section 301, assigned to the courts the duty of determining whether the reluctant party has breached his promise to arbitrate. The court, among other things, said:

> "For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit."

In *Enterprise Wheel*, a case directly in point with the issue before the lower courts here, the Court said that courts should refuse enforcement of arbitration awards in suits brought under 301 (a) of the Labor Management

Relations Act when it appears that the arbitrator's decision is not based on a collective bargaining contract.

In discussing the role of the arbitrator and the role of the courts in enforcing the arbitrator's awards, Mr. Justice Douglas, speaking for the Court, said, in *Enterprise Wheel*:

> "An arbitrator is confined to interpretation and application of a collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet *his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation the courts have no choice but to refuse enforcement of the award.*" (Our emphasis.)

Then in *Atkinson*, where the Union sought to make use of the arbitration provisions of an agreement to force the employer into an arbitration position, Mr. Justice White, in analyzing the crucial section of the agreement, Article 26, pointed out that there was not a word in the grievance and arbitration Article providing for a submission of grievances by the company but instead, there was the express, flat limitation that Arbitration Boards should consider only employee grievances.

On the basis of that phase of the agreement, similar to the one involved in this case, Mr. Justice White, speaking for the entire Court, said this:

> "Under our decisions, whether or not the company was bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the court on the basis of the contract entered into by the parties. 'The Congress * * * has by Section 301 of the Labor-Management Relations Act assigned the courts the duty of determining whether the reluctant

party has breached his promise to arbitrate. *For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'"* (Emphasis ours.)

That portion of the Court's opinion in *Enterprise Wheel, supra*, where Mr. Justice Douglas said the following, is most appropriate here:

> "An arbitrator * * *; does not sit to dispense his own brand of industrial justice. * * * *his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation the courts have no choice but to refuse enforcement of the award."* (Our emphasis.)

It would appear, then, that the decision of the Court of Appeals, instead of being on grounds which are in derogation of the national labor policy, as petitioners charge, follows with precision the rules heretofore laid down by this Court.

(C) Can a Substitute for the Arbitrator Selected by the Parties Make a Binding Award Without Having First Been Authorized to so Act by Both of the Parties?

In the second portion of their petition the petitioners seem to be making the claim that the Court of Appeals was wrong in holding that the respondents here should have been permitted to file their tendered amended answer following this Court's decision on the issue of District Court jurisdiction.

Their argument appears to run in the direction that the respondents waived their right to attack the authority of the L-M-C by waiting some three years after the first award and/or that a waiver resulted from the fact that

counsel for the respondents was in attendance before the panel which did meet. In this latter respect the petitioners equate this case with *Ficek v. Southern Pacific Co.*, 338 F. 2d 655, where they quote from that case to the effect that if a claimant voluntarily submits his claim to arbitration, he cannot thereafter challenge the authority of the arbitrators to act if the outcome is unfavorable.

Because these claims of waiver are based on statements more fictional than factual, a clarification is in order here.

In the first place, the petitioners assert in the first full paragraph on page 15 of their petition that the respondents after appearing before the L-M-C in cases on the merits, waited some three years to amend their District Court answer.

The fact is, as is well known to the petitioners and, we suggest, beyond dispute, that on only *one* occasion did any representative of the respondents ever meet with a panel. On that one occasion counsel for the respondents appeared alone in response to a request from Monsignor Doyle. Present at that meeting were three persons thought to be representatives of the L-M-C. Also present were counsel for the petitioners and union officials. There were no grieving store employees present. There were no other representatives of any of the stores present. No representatives of respondents ever met with a panel thereafter.

That one meeting consisted only of Monsignor Doyle reading off a list of complaints *after* counsel for the stores made it clear that his presence "did not or could not enlarge upon the prerogatives and jurisdiction of the L-M-C" [5] as defined in the December 24th Statement. The

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[5] That this objection was raised has never been disputed by the Union, either in the original District Court hearing where

(Continued on following page)

Union officials elaborated upon their complaints and, in instances where appropriate, counsel for the stores stated his position. (Appx. 15a.)

In making the computation of a claimed three year delay in raising the question of whether the panel was, in fact, an L-M-C authorized panel, the petitioners seem to overlook the fact that that question was raised in the District Court at the respondents' very first opportunity. As the record shows, the respondents did not discover that the so-called L-M-C panel was, in fact, not an arbitration panel of the L-M-C until after the District Court first heard the case. The first time the respondents had an opportunity to bring this matter to the Court's attention was when the case was returned to the District Court.

We do not dispute the statement in the petition that the parties specifically chose the L-M-C as the vehicle for resolving disputes under the Statement of Understanding. However, it was within the contemplation of the parties that these disputes would be handled within the framework of the L-M-C. At no time did the parties agree that if the L-M-C charter prohibited arbitration (a fact not known to either party at the time), that the Chairman of the L-M-C could substitute another arbitration vehicle without the consent of the parties.

We submit that the respondents could not waive something unknown to them. In other words, the respondents did not voluntarily submit the Unions' complaints to arbitration, nor did they voluntarily submit any complaints to substitute arbitrators which were known to the respondents.

(Continued from preceding page)

the transcript will show that counsel for petitioners brought the objections to the Court's attention or in their Court of Appeals' brief where counsel for petitioners through "a somewhat dim memory" admits there was some discussion to that effect.

In their conclusion the Unions seek review here by claiming, in addition to a failure of the lower courts to follow the dictates of *John Wiley, supra,* that the ruling below deviated from the principles and intent of this Court's first holding. This latter claim, we believe, is completely fallacious. This Court's first holding was limited to the question of the jurisdiction of the District Court to entertain this lawsuit by virtue of Section 301(a) of the Labor Management Relations Act of 1947, as amended. We submit that this Court did not, as the petitioners seem to claim, direct the District Court to enforce these agreements and thus enforce the awards of the so-called L-M-C panel.

CONCLUSION.

On the basis of the foregoing and the entire record, we assert that the judgment of the Court of Appeals is correct and therefore the relief sought here should be denied and costs assessed to the petitioners.

Respectfully submitted,

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APPENDIX.

STATEMENT OF UNDERSTANDING.[1]

(Page 1): 1. Employees of Lasalle's, who have been absent due to the strike, will be re-instated without discrimination because of any strike activities and without loss of seniority provided they make application for re-instatement in the form and manner provided for by the employer within fifteen days of receipt of notice from the employer.

2. All such employees who have complied with the provisions of Paragraph 1 above, will be returned to work not later than February 2, 1959, as scheduled by the Company, in their former position classifications if vacant or in positions comparable in duties and earning opportunities.

3. It is understood that returning strikers will devote their best efforts to their work and to serving the customers of Lasalle's, recognizing that stability of employment depends upon the success of the business.

4. Lasalle's will warrant to the L-M-C that the Company will not reduce rates of pay presently in effect or withdraw or reduce employee benefit programs currently provided. This assurance includes all improvements offered by the Company through the L-M-C on November 15th, 1957, which are already in effect. No employee will be discriminated against, by reason of Union activities, membership or non-membership. All employees will continue to have job security and no employee will be discharged except for just cause. Wage schedules currently in effect are appended as Exhibit A. Copies of hours and working

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[1] This is the statement of understanding given to L-M-C by Lasalle's, Dec. 24, 1958, sometimes referred to in briefs and court opinion as "strike settlement agreement." Except for the first three paragraphs which applied only to Lasalle's, the Lion Store statement is identical.

conditions and other existing benefits, as requested by L-M-C, are attached as Exhibit B.

(Page 2): 5. Neither the Company nor the Union will interfere with the employee's right to join or not to join a union, as provided and guaranteed by the Labor-Management-Relations Act. Nothing contained herein is to be construed as giving recognition to the union unless at some future time within the discretion of the union, the union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board.

6. The Union agrees that it will not request bargaining rights unless it proves its right to represent the employees as provided in Paragraph 5 above; nor will the employer recognize any union except upon certification by the N. L. R. B.; nor will the Company file a petition for election unless a claim for representation is made upon the employer. Nothing herein shall preclude an employee representative from entering areas of the store which are open to customers; or from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operating of the business.

7. Any individual employee who may have a grievance involving an interpretation or application of or arising under the terms of this understanding with the L-M-C, and who has presented such grievance to his supervisor and the Personnel Department without reaching a satisfactory solution, may take his case to the chairman of the L-M-C who in turn shall refer the case to a panel of the L-M-C, whose majority decision and order shall be final and binding. The panel shall render its decision and order within fifteen days after the grievance has been submitted

to it. The procedure regulating the hearing of the grievance by the L-M-C panel shall be determined by the panel.

(Page 3): 8. The Union will agree that immediately upon receipt of this statement of understanding by the Toledo Labor-Management Citizens Committee it will cease all picketing, boycotting or other interference with the business of Lasalle's or R. H. Macy & Co., Inc. wherever located. The Union, the strikers, and the Company shall withdraw forthwith all petitions, unfair labor practice charges and litigation before the National Labor Relations Board and the Courts and further agree not to institute in the future any litigation involving or arising out of the instant dispute. The Union and the Employer shall execute mutually satisfactory releases, releasing and discharging each other, the International Union, the local unions involved, and representatives of the union in their representative or individual capacity, labor papers, and all other labor organizations or their representatives who acted in concert or cooperation in connection with the dispute, from any and all claims, demands, causes of action, of whatever nature or description arising out of the labor dispute, including but not limited to the strikes, picketing, boycotting, and all other activities which may have taken place up to the present date.

9. This understanding shall become effective in accordance with the letter of transmittal dated December 24, 1958.